Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE,
FRANK UNANUE, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey

PETITION FOR A WRIT OF CERTIORARI

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February 1, 1999

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QUESTIONS PRESENTED

1. Whether the New Jersey courts below violated the due process clause of the fifth or fourteenth amendment when they entered judgments against petitioner when he had not been and was not a party or a party in interest and moreover had not been given any notice that a judgment could be rendered against him.

2. Whether New Jersey is obligated by the full faith and credit clause of the United States Constitution to give effect to the Civil Code of Puerto Rico on matters governed by such laws, as they relate to its family laws, fundamental public policies, forced heirship, legal partnerships of gains and contracts.

3. Whether, unless the bankruptcy court orders otherwise, upon dismissal of a bankruptcy case, any orders or judgments against the bankruptcy estate are without force and effect. Furthermore, the supremacy clause requires that a judgment of the U.S. Bankruptcy Court, be given Full Faith and Credit.

PARTIES TO THE PROCEEDING

Ulpiano Unanue-Casal, a/k/a Charles Unanue was not a party in the proceeding below but is the petitioner in this petition for a Writ of Certiorari to review the final judgment rendered below against him personally and interlocutory decisions below made final and appealable by that final judgment, notwithstanding that he was neither a party or a party in interest and was in bankruptcy during the proceeding.

The parties to the proceeding below were plaintiffs Goya Foods, Inc., Joseph A. Unanue and Frank Unanue, individually, as executors of the will of Prudencio Unanue, as trustees of an *inter vivos* trust created by Prudencio Unanue and as trustees of sixteen trusts thereunder, and the beneficiaries of said trusts, Robert Unanue, Mary Ellen Yorio, C. Randall Unanue, Joseph F. Unanue, Thomas Unanue, Mary Carmen Norris, May Ann Unanue, Mary Louise Unanue, Theresa Elizabeth Devir, Francisco R. Unanue, Mary Isabel Unanue, Carlos A. Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue and Jorge E. Unanue; and Carol Ann Unanue-Freeboarg; and defendant, the bankruptcy estate of Charles Unanue.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of ceriorari issue to review the judgment of the Supreme Court of the State of New Jersey issued on November 5, 1998 and the decisions below.*

OPINIONS BELOW

The judgment of the Supreme Court of the State of New Jersey entered on November 5, 1998, denying Petitioner's petition for certiorari has not been reported and is reprinted in the appendix of the Petition of the Bankruptcy Estate of Ulpiano-Casal a/k/a Charles Unanue (hereinafter "BE appendix"), p. 2a *infra.*

The order of the Appellate Division, New Jersey Superior Court, denying both Petitioner's petition for re-

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* Because of the similarity of this case and the Petition for Writ of Certiorari filed in the Bankruptcy Estate of Ulpiano Unanue-Casal, a/k/a Charles Unanue, Petitioner v. Goya Foods, Inc., et al., Respondent, the Clerk of this Court has granted this Petitioner use of that Appendix.

hearing, filed on June 9, 1998, has not been reported and is reprinted in the BE appendix, p. 12. *infra.*

The opinion and judgment of the Appellate Division decided on May 19, 1998 is reported at 311 N.J.Super 589 (App. Div. 1998), and is reprinted in its original form in the BE appendix, p. 3a. *infra.*

The opinion of the Chancery Division of the New Jersey Superior Court entered on November 19th, 1993 is reprinted in the BE appendix at p. 128a. The Order of the Chancery Division, dated November 19, 1994, is reprinted in the BE appendix at p. 178a. The Opinion of the Chancery Division, dated March 28, 1994, is reprinted in the BE appendix at p. 181a. The Opinion of the Chancery Division, dated February 23, 1995, is reprinted in the appendix at p. 200a. The Judgment and Reference to Special Master of the Chancery Division, is reprinted in the BE appendix at p. 214a. The Final Judgment of the Chancery Division, dated February 23, 1995, is reprinted in the BE appendix at p. 211a.

The abridged version of the opinion and order of the Honorable Martin L. Kole, New Jersey Superior Court, entered on December 4, 1991, is reported at 244 N.J. Super 362 (Law Div. 1991), and a complete version is reprinted in the BE appendix at p. 14a. *infra.* The Order of Judge Kole, dated December 4, 1991, is reprinted in the BE appendix at p. 222a.

JURISDICTION

On appeal, Petitioner asserted at page 9 of its brief on appeal number A-4130-94T3 that the duplicate final judgment of the Chancery Court which was entered against him individually, was error, because he was neither a party or a party in interest and moreover was not noticed at any time prior to the rendition of the judgment against him in further violation of Due Process which is guaranteed by the 5th and 14th Amendments to the Constitu-

tion These matters were further addressed and preserved in pages 5 to 8 of the reply brief. The Appellate Division affirmed the orders below.

On petition to the New Jersey Supreme Court, the issues of due process were presented but the New Jersey Supreme Court declined to review.

The jurisdiction of this Court to review the opinion and judgment of the New Jersey Supreme Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitutional amendment V.

> No person shall . . . be deprived of life, liberty or property, without due process of law.

U.S. Constitutional amendment XIV, Section 1.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article IV, Section 1.

> Full Faith and Credit shall be given in each State to the public Acts, Record, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

U.S. Constitution, Article VI Clause 2.

> This Constitution and the Laws of the United States which shall be made in pursuance thereof, and all

Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

48 U.S.C. § 733a.

All citizens of the United States who have resided or who shall after March 4, 1927 reside in the island for one year shall be citizens of Puerto Rico.

28 U.S.C. § 1738.

The Acts of the legislatures of any State, Territory or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of that court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

11 U.S.C. § 349(b)(2), (3).

Unless the court, for cause, orders otherwise, a dismissal of a (bankruptcy) case vacates any order, judgment or transfer ordered and revests the property of the estate in the entity in which such property was vested immediately before the commencement of this case under this title [1 USCS §§ 101 et seq.].

BACKGROUND OF THE CASE

Prudencio Unanue-Ortiz ("Prudencio"), father of petitioner and respondents Joseph and Frank Unanue made legal entry into the United States, at San Juan, Puerto Rico, from St. Thomas, on February 14, 1904. In 1908 he moved to San Lorenzo, a small town in Puerto Rico and established a dry-goods store there.

In 1911 Augusto Prudencio Falero ("Augusto"), who was given the name "Prudencio" at his baptism and used his mother's surname of Falero, was born out of wedlock, in San Lorenzo and was the natural son of Prudencio. Augusto is an heir of Prudencio by force of law pursuant to 31 LPRA § 2361.[1] In the same year that Augusto was born Prudencio became engaged to marry Carolina Casal-Valdes ("Carolina") the granddaughter of the largest landowner in the region who had been the head of customs, for Spain. Carolina and Prudencio were citizens of Spain that grew up in Puerto Rico.

In 1921 Prudencio and Carolina were married in San Lorenzo, Puerto Rico. Under the Art. 1315 of the Civil Code of Spain, which applied to all its citizens, as well as § 1282 of the Civil Code of Puerto Rico, which became effective on July 1, 1902 by order of the U.S. Congress (currently, 31 LPRA § 3551) a legal partnership of gains and acquest, known in the official translation into english as a "Conjugal Partnership" was created on the day of the marriage as a juridical entity with a personality of its own that would, as long as the marriage existed, be a separate entity, distinct from the spouses that compose it. The Conjugal Partnership would be the owner of all of the gains in the assets of the married couple, irrespective of any subsequent changes in the residence, domicile, or citizenship of either or both of the spouses.

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[1] The Hon. Judge Kole who presided over the 171 day plenary hearing in New Jersey made the finding that Prudencio believed that Augusto was his son, by Ramona. (BE appendix at p. 35a.) A subsequent DNA test has proven that Augusto is the half-brother of Petitioner.

In 1922 Petitioner was born of that marriage, also in San Lorenzo, and became an heir of his parents by force of law, having a right to a legal portion of the property of the Conjugal Partnership, and of the estate of the survivors of the marriage, forever reserved for him, pursuant to Section 794 of the Puerto Rico Civil Code of 1902 (now 31 LPRA 2361).

In late 1923, or early 1924, Prudencio went to New York in search of employment and was followed, later in 1924, by his wife and son, Ulpiano a/k/a Charles, the petitioner herein, as required by 31 LPRA § 283, obligating the wife to obey her husband and follow him to wherever he chose to reside. In 1926, Prudencio started a business as sales agent and representative of Spanish food exporters and shippers. He brought Augusto to New York to work for him as a clerk. While employed by Prudencio, Augusto had a mental collapse and has since then been mentally incapacitated, although his memory and ability to speak the english language remained unimpaired. Prudencio then sent him back to his mother, Ramona Falero, in Puerto Rico and throughout his life, sent her $5.00 and later $10.00, every week for his care. Ramona's pleadings to Prudencio to have him recognize Augusto as his son were always refused and she was threatened, by Prudencio, with a discontinuance of the $10.00 weekly stipend and with the use his company's lawyers, to oppose whatever claim she could make, if she ever took legal action to have their son recognized as his natural son.

In 1936 the Civil War broke out in Spain and the shipments from Spain to the United States were no longer possible. An additional business which Prudencio had started some years before, with a partner, in New York, to assemble and sell Credium brand AM Radio Receivers, failed at about the same time and Prudencio was obliged to file personal bankruptcy.

While in bankruptcy, Prudencio started an ethnic oriented wholesale grocery business with the entire funds

provided by his wife Carolina from her inheritance. It was that small wholesale grocery business which evolved into Goya Foods, Inc. ("Goya") the exclusive owner of the GOYA brand, an ownership which gave it control of the entire conglomerate of affiliated related companies (the "Goya Companies") that were, and are, dependent on the heavily advertised and promoted GOYA brand for their profitable existence. The Goya Companies were founded and grew over the years without any funding other than what had been originally provided by Carolina when Prudencio was in bankruptcy.

In 1946 Don Prudencio incorporated the wholesale grocery business as Unanue & Sons, Inc. He had 48 of the total of 101 issued shares of stock issued equally to his four sons with Carolina and had the other 53 shares, issued nominally to himself as administrator of the Conjugal Partnership, in compliance with 31 LPRA § 284.

In 1947 petitioner graduated with degrees in engineering and joined the family wholesale grocery business, which even with the addition of a small food packing plant, had weekly sales averaging only $6,400.00. One year later Prudencio discovered that his trusted employee and manager had been stealing and dismissed him. After some discussion and threatening to leave, the petitioner became the new manager.

In 1949 Puerto Rico Food Products, Corp. was formed to purchase a small bankrupt cannery in Puerto Rico. To avoid estate taxes, Prudencio ordered that all of the shares in the new corporation be issued equally to his four sons with Carolina, including Petitioner. Prudencio later admitted that the main reason that he would not have stock in Goya's affiliated companies was because of the forced heirship laws of Puerto Rico, Augusto would be entitled to a share under the forced heirship laws of Puerto Rico and cause money to be taken out of the business, after his death.

Prudencio, as administrator of the property of the Conjugal Partnership, held the majority of the shares of

stock and control of the business that owned the Goya brand, the foremost advertised Spanish brand. He thus held the control of all affiliated companies that were dependent on the Goya brand. However, until his dismissal, virtually all major business, policy and operational decisions were made by Petitioner, with Prudencio's consent or during his absence.

In 1949 Petitioner applied for and obtained a full tax-exemption grant from the Puerto Rican government for Puerto Rico Food Products Corporation so that its entire corporate profits could be used for the growth and development of the company.

In 1952 came the first major expansion of the Puerto Rico operations. Petitioner moved to Puerto Rico to oversee design and construct an entirely new and modern plant in Bayamon, Puerto Rico, for Puerto Rico Food Products Corporation. After the factory was built and commenced operations, Petitioner's brother, Joseph Unanue was moved to Puerto Rico and Petitioner was again based in New York.

In 1958, a new and modern headquarters and warehouse facility was built in the Red Hook section of Brooklyn, near the piers where products from the cannery in Puerto Rico and from foreign countries arrived. In 1961, without objection, Petitioner changed the name of Unanue & Sons, Inc. to Goya Foods, Inc. In 1962, with the tax-exemption of Puerto Rico Food Products Corp. expiring, Petitioner again moved to Puerto Rico to form a new tax-exempt corporation, Caribbean Canneries, Inc. ("Caribbean") and build a new plant which would be four times the size of the still new and modern Puerto Rico Food Products' cannery.

In the three years, from 1962 to 1965, that it took to build the Caribbean facility and to create a new sales force and an advertising agency there was a 2,000% increase in sales, in the Puerto Rico business, and an even

larger increase in the net profits of the Puerto Rico operations. The big increase in sales and profits in Puerto Rico made up for the reduction in the customary annual increase of sales and profits in the New York operations, during the time that Petitioner was based in Puerto Rico.

In June 1964, Prudencio and his other three "recognized" sons engaged Atty. Samuel L. Siegel (Siegel) as personal tax advisor for Prudencio and as corporate counsel for Goya and the affiliated companies (the "Goya Companies").

In 1966 Prudencio called for a meeting with his four sons at Siegel's office, and made known to them the existence of Augusto. He said that Augusto, was his son but was mentally incapacitated and living with his mother in Caguas, Puerto Rico, and informed his sons that he was sending $10.00 every week for his support. He said that he did not want Augusto to share in his estate because it would take capital out of the business and that posed a problem because of the mandatory inheritance (forced heirship) laws of Puerto Rico. Siegel said that at Prudencio's request he had worked out a plan which would reduce the book value of the 53 shares of Goya (held nominally by Prudencio) substantially reducing what would have to be paid to Augusto and the taxing authorities upon the death of Prudencio or Carolina.

SCHEMES AND CONSPIRACIES

Under Siegel's plan, agreements were executed between the four sons of Prudencio and Carolina that all would have an equal ownership in the Goya Companies, irrespective of record ownership. Petitioner would sell his 25% ownership in Caribbean, to Caribbean while retaining his full ownership through a 25% interest in the remaining shares held by his brothers. With the proceeds, 1,250 non-voting shares of Goya, representing a 92% ownership interest in Goya, were issued nominally to Petitioner, lowering the book value of the property of the

Conjugal Partnership and of the future estate of Prudencio by more than 90%, in a deal that Siegel assured all was entirely legal as the result of his expertise.

In 1968, petitioner reviewed trial balances of Goya and of its affiliates in Puerto Rico, prior to their fiscal year end and found that they had a negative physical inventory, that is—less than zero—notwithstanding that the warehouses were full of merchandise. That led to the discovery that substantial quantities of product had been shipped by Goya, free of charge to tax-exempt Caribbean so as to evade the payment of taxes to the IRS and furthermore that the net profits had been understated by an additional $2,500,000 in the 1968 fiscal year, by lowering the reported physical inventories by that same amount.

Petitioner confronted his brothers with his discovery of the tax evasion which he considered to be a form of thievery, morally wrong, and an endangerment to them all, which furthermore put the tax exemption grants on the businesses in Puerto Rico at risk of being canceled retroactively and imperilled all of the Goya Companies. It is unrefuted that petitioner told his brothers that he would not remain locked into such an illegal situation and that unless they corrected the situation by reporting and paying taxes on all the unreported profits, he would report the wrongdoing to the U. S. Attorney General, and travelled to Washington, D.C. to do so. Only then did Charles' brothers agree to report all of the hidden profits at the next fiscal year end tax returns and offered Charles an option to sell his entire ownership interest in the Goya Companies, to them, as a guarantee that they would fulfill their promise to cease their wrongdoing.

When petitioner's brothers reneged on their agreement, just before the next fiscal year end, told him that the tax fraud as well as the fraud against their mother and Augusto would continue and that he would be the scape goat if it were discovered by the authorities, which caused Peti-

tioner to make a public disclosure of the situation in a press conference. He was immediately dismissed and left without liquid assets on income. As further punishment or revenge and for the personal benefit of his brothers, the Goya Companies, which became the *alter egos* of Petitioner's brothers, were used and continue to be used, along with the various judicial systems to take Petitioners inheritance, his 24% ownership interest in the Goya Companies as well as his share of the taxable and tax-exempt corporate dividends, and to attach *ex parte* and appropriate after denial of trial by jury, all of the real property of Petitioner's wife, in order to restrict her ability to support her husband and to fund the litigation.

After the public disclosure by petitioner, taxes, interest and fraud penalties were paid by the corporations for the transfers that had been made to tax-exempt affiliated corporations in Puerto Rico, but neither taxes nor penalties were assesed on the larger amount of hidden profits in the unreported physical inventories.

After the death of petitioner's mother, Carolina, in 1984, who had bequeathed to petitioner and his three brothers, equal shares of her estate, petitioner learned that an *in futuro* waiver of his right to inherit from his father was a nullity and sent a letter to his two brothers—one brother had died—who were also citizens of Puerto Rico and the executors of their parents' wills, asking for his share of the estates of their parents.

The additional problem that confronted petitioner's brothers was that petitioner's claim to a 24% share of the estates of his parents is over 300 times greater that what was reported to the various taxing authorities as the value of the combined estates. A further problem was that the taxing authorities in Puerto Rico were informed by petitioner's brothers that their mother was domiciled in New Jersey. While in New Jersey, the same individuals reported that their mother was domiciled in Puerto Rico.

As a result no taxes were paid anywhere on the estate of petitioner's mother and less than $400,000 was paid on the estate of his father. When petitioner's mother passed away in 1984, the value of her half interest in voting control of the Goya Companies was over $200,000,000.00.

The request of petitioner, to his brothers in Puerto Rico, for his share of the estates of their parents, resulted in a 171 day bench trial in New Jersey, which was initiated in the New Jersey Chancery Court by petitioner's brothers and paid by the corporations. The New Jersey action asked for a determination that the domicile of their father had been New Jersey at the time of his death in Puerto Rico.[2] The cost of petitioner's participation at the bench trial and the *ex-parte* attachment of some of the real properties of petitioner's wife, restricted her access to funds and her willingness to pay all of her husbands debts and forced petitioner to file a Chapter 7 bankruptcy petition, in Puerto Rico, where he was domiciled and a citizen.

The initial five years of acrimonious litigation ceased when petitioner capitulated and, in Puerto Rico, where all of the stockholders, directors and partners of the family business were residents and citizens, signed the "1974 Amendment," an amendment to a previous agreement that had been defaulted by the Goya Companies. In the 1974 Amendment, in addition to other concessions and the cancellation of the required initial public offering that was to

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[2] Petitioner's father and mother were naturalized citizens of the United States. As found by the New Jersey court, they had voluntarily resided in Puerto Rico, without leaving the island, during the last 5-1/3 and 14 years of their lives, respectively. Pursuant to 48 U.S.C. § 733a, both were citizens of Puerto Rico. However, the New Jersey court decided that petitioner's father was domiciled in New Jersey, when he died in Puerto Rico and moreover that petitioner had no right to inherit from his mother, who was not before the New Jersey court, because New Jersey did not recognize, or give Full Faith and Credit to legally constituted partnerships of gains (Conjugal Partnerships), organized under the laws of Puerto Rico.

be made under S.E.C. rules, of all of petitioner's ownership in the Goya Companies, petitioner waived his right to the future inheritance from his father (though not his mother) and the inclusion of a penalty clause that in any future litigation between any of the parties to the 1974 Amendment *on any matter*, irrespective of who initiated the law suit, the loser would be obliged to pay to the successful party, twice all the legal fees as well as all other expenditures incurred in the litigation (the "Penalty Clause").

In 1987, three years after the death of petitioner's mother and after not receiving any part of his inheritance from his mother's estate who had bequeathed to petitioner an equal 25% share of her substantial estate, petitioner was reliably informed that, pursuant to the applicable family law of Puerto Rico, the *in futuro* waiver of his right to inherit from his father was entirely invalid *ab initio*. Debtor wrote to his surviving two brothers (one had died), asking for his own share of the inheritance from both the estates of their parents, which they controlled, as the executors. The request resulted in the 171 day bench trial in the New Jersey Chancery Court which, after the attachment of some of the independently owned real property of petitioner's wife, exhausted the limited resources then available to petitioner's wife, and forced debtor to file the bankruptcy petition, in the U.S. Bankruptcy Court for the District of Puerto Rico.

Two of the family corporations, Goya and Goya de Puerto Rico, Inc. then pursued petitioner in the bankruptcy court where they were not scheduled creditors and demanded 2004 examinations of both petitioner and his wife. In order to obtain the required standing to participate in the inquest, the two corporations, (collectively "the Goyas") filed contingent proofs of claim totaling $6 million, based solely on the Penalty Clause, with no substantiation whotsoever. The Goyas contingent claims were soon afterwards increased to $20 million, also without substantiation.

The bankruptcy court, on petition from the Goyas to annul the automatic stay on the New Jersey proceedings, and without objection from petitioner to modify, but not annul, the automatic stay [3] so as to permit only the completion of the bench trial on the limited issue of the domicile of petitioner's father, modified the stay, but denied the petition to annul the stay completely. The Goyas did not appeal the decision.

A Complaint objecting to petitioner's discharge was then filed jointly by the court appointed Chapter 7 trustee ("Trustee") and the Goyas. A second Complaint was filed by the Goyas, acting "for and on behalf of the Trustee" to set aside fraudulent conveyances, alleging, without any substantiation, that petitioner had an ownership interest in his wife's property. The Goyas then posted a bond and succeeded in attaching all of the real property petitioner's wife, without an evidentiary hearing.

The Complaints, together with petitioner's and Trustee's pending objection to the Goyas' claims, were consolidated in an adversary proceeding, into which was added a counter claim filed by petitioner.

The court appointed Chapter 7 Trustee then informed the court that all of the Goyas' claims were fraudulent, but he did not withdraw the unsubstantiated complaints which he had filed jointly with the Goyas, nor the petition for the attachment of the real property of petitioner's wife.

An interlocutory finding was thereafter made by the New Jersey court that debtor's father, who had died in Puerto Rico, after voluntarily residing there for the 5⅓ years immediately prior to his death in Puerto Rico, was domiciled in New Jersey at the time of his death. The

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[3] Petitioner did ask as a condition for not objecting, that he be given a free transcript of the proceedings in the 171 day bench trial in New Jersey, which Goya had paid for and obtained at the end of every day of the trial, but the request was denied.

court also held that 48 USC § 733a pursuant to which petitioners father was a citizen of Puerto Rico and could not be a domiciliary of New Jersey at the same time, was irrelevant.

The Goyas then again petitioned the bankruptcy court to annul the stay on the uncommenced proceedings in New Jersey. At the hearing, petitioner made an oral motion for non-suit, thorough counsel, which the bankruptcy court granted, finding, in essence, that no new evidence had been presented to warrant the further lifting of the stay, after the first hearing in which the court's final judgment denying the Goyas' petition for the annulment of the automatic stay, had not been appealed. The judgment of the bankruptcy court denying the annulment of the automatic stay on proceedings that had not commenced in the New Jersey state court, was appealed to the U.S. District Court for the District of Puerto Rico.

Immediately after the interlocutory decision of the New Jersey court, the Trustee of the bankruptcy estate of petitioner, was substituted for the petitioner as the only party defendant and party in interest in the New Jersey proceedings, not withstanding that the bankruptcy court, as a further reason to annul the automatic stay on the uncommenced proceedings in New Jersey, had said that because the Trustee had a full time law practice in Puerto Rico, no one would be available to defend the interests of the bankruptcy estate if proceedings were held in New Jersey.

Afterwards, the bankruptcy court issued an Opinion and Order severing the Objection to Claims from all other issues in the consolidated adversary proceeding, for an early resolution of that threshold issue, and staying all other matters. The bankruptcy court later stated its belief that the resolution of the Objection to Claims would probably resolve all other pending issues and ordered that a previously scheduled joint pre-trial report be limited to the issue of the objection to the Goyas' claims. The deci-

sion to hear and determine the long standing objection to claims, as was required by the Code, was also appealed to the district court and a stay pending appeal was requested.

The bankruptcy court then rendered a second Opinion and Order denying the stay pending appeal and ratifying its decision that it had severed, for prompt resolution, only the Objection to Claims, staying all other issues.

The bankruptcy court then sanctioned the Goyas for not participating in the joint pre-trial report as ordered, ordered discovery of the limited issues of the objection to claims to be completed by December 31, 1992 and scheduled a new pre-trial report. Those orders were complied with, as was a subsequent request for memorandum of law.

After two adjournments, on the eve of the trial on the objection to the Goyas' contingent claims, which the Trustee had reported were fraudulent, the district court reversed the decision of the bankruptcy court not to annul the automatic stay on the uncommenced proceedings in the New Jersey state court and in its judgment ordered that the record in the bankruptcy court be sent to the New Jersey state court, thereby precluding the bankruptcy court from holding its imminent hearing on petitioner's and Trustee's objection to the Goyas' claims, that was required by the Bankruptcy Code.

The decision of the district court, acting in its appellate capacity was appealed to the Court of Appeals and a petition was made for a stay pending appeal. The circuit court denied the stay pending appeal and affirmed the reversal of the bankruptcy court, thereby relieving the bankruptcy court of its obligation to adjudicate the long standing and well briefed objection to the Goyas' "fraudulent" claims.

The New Jersey Superior Court, immediately after the reversal of the bankruptcy court, which annulled of the

automatic stay on the New Jersey proceedings, hastily, without discovery and summarily rendered interlocutory Orders allegedly based on New Jersey laws: 1, That the 1972 Agreement and the 1974 Amendment, were valid and enforceable, notwithstanding that 11 of the 12 parties to the contracts were not before the court, that pursuant to the laws of Puerto Rico, where the contracts were signed, notarized and performed, the contracts were nullities and legally non-existent and that none of the contracting parties had any contacts with New Jersey; 2, That petitioner, had no right to any part of his mother's estate, notwithstanding that he had been bequeathed 25% of her estate in her will and moreover that he was inalienably entitled to ¼ of her estate pursuant to the forced heirship laws of Puerto Rico as well and; 3, That petitioner had no right to any part of his father's estate, notwithstanding that under the laws of Puerto Rico that applied to both petitioner and his father who were citizens of Puerto Rico, petitioner had an inalienable right, under the forced heirship laws as well as under the conjugal partnership laws of Puerto Rico to ⅕th of the estate of his father. (Augusto, who was his father's natural son, has a right to another ⅕th and to compensation for his abandonment during the 60 years, after his incapacity.

The New Jersey court then rendered, also without discovery or trial, a Final Judgment against the bankruptcy estate [4], of $6.9 Million, based on the Penalty Clause, for the legal expenditures of individuals opposing petitioners claims, who, were not parties to the 1974 Amendment which contained the Penalty Clause. The Final Judgment, moreover, made final and appealable all the previous interlocutory decisions against the bankruptcy estate. The judgments were appealed to the Appellate Division, which affirmed and a motion for reconsideration was denied. A

[4] Petitioner made application to the bankruptcy court to be permitted to represent his bankruptcy estate, *pro se*. The request was denied as being against the Code.

petition for certiorari was made to the New Jersey Supreme Court which decided not to review the matter.

Although the Trustee had not participated in any of the New Jersey proceedings and Petitioner had been substituted by the Trustee of the bankruptcy estate in 1991 prior to all the uncommenced proceedings in the Chancery Court and thereafter was not a party. On the day of the last bench hearing both Trustee and petitioner were contacted in Puerto Rico in a telephone call from the court. Without the filing of a complaint, notice or resubstitution, and petitioner's statements that he was not a party, plaintiffs requested and obtained an additional duplicate judgment against petitioner who was in bankruptcy without due process, for plaintiffs alleged legal expenditures.

The judgments against petitioner, individually were appealed to the Appellate Division, through counsel and when denied, petitioner made a *pro-se* motion for reconsideration which was also denied. The New Jersey Supreme Court decided not to review a *pro-se* petition for certiorari.

REASONS FOR GRANTING THE WRIT

I. THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENT PRECLUDE ALL OF THE DETERMINATIONS MADE BELOW.

The courts below entered judgment with respect to matters which had not been pleaded, and made determination without fair notice that it would rule on issues which had not been placed before it by the pleadings. The courts below have, therefore, come into conflict with a leading pronouncement by this Honorable Court of the principal of procedural due process. Such a conflict warrants the granting of certiorari under Supreme Court Rule 10(c).

The first such matter was with respect to claims that petitioner had with respect to the estate of his mother,

Carolina. No pleading brought before the court the claims which petitioner had against the estate of Carolina, who like petitioner, was a citizen of Puerto Rico. No pleading was brought to the courts below because the executors of her will, petitioner's brothers, certified to the New Jersey court that Carolina was domiciled in Puerto Rico. In Puerto Rico, where Carolina had resided without leaving the island during the last 14 years of her life, the same individuals certified to the authorities that Carolina was domiciled in New Jersey, at the house of her son Joseph, a residence that she had never seen. Her will was not probated anywhere, no part of her estate has ever been given to petitioner who like his brothers was bequeathed an equal ¼th. of her very substantial estate in her clear and unambiguous will. Of course, no taxes were paid anywhere.

Although petitioner was bequeathed an equal ¼th of Carolina's estate, the court, *on its own initiative*, in a proceeding in which petitioner was not a party, entered a judgment that petitioner was not entitled to any inheritance from Carolina's estate, without any notice, and irrespective of the fact that it did not have jurisdiction on the matter and without any opportunity for discovery and most certainly, without due process. Moreover, petitioner had no opportunity to request a trial by a jury of his peers, to which he would have been entitled in a suit at common law as guaranteed by the 7th amendment to the Constitution. There is no question that petitioner was also entitled to defend against the theft of his property but was denied the opportunity to do so.[5]

---

[5] During all the summary proceedings in the Chancery Court, all of petitioner's assets, consisting almost entirely of his multi-million dollar claims for his inheritance and for about a 24% ownership interest in the Goya Companies and in the dividends declared after 1969, were in his Chapter 7 bankruptcy estate under the control of the Trustee, who, as the bankruptcy court had predicted, could not appear personally or through counsel in the New Jersey pro-

Not only did the court below take it upon itself to decide matters concerning Carolina's estate, which was not before it, but the court also transformed claims that were asserted against the undefended bankruptcy estate of the petitioner into a judgment against petitioner, individually, who was not a party or a party in interest in the proceedings, without any notice whatsoever to petitioner of any complaint or re-substitution as a party in the summary proceeding, seemingly with the objective that it could not be discharged by the bankruptcy court and would survive the bankruptcy case.

It was at the last hearing before the Chancery Court in the completion of the summary proceeding in which Trustee and petitioner, who were in Puerto Rico, were reached by telephone, that plaintiffs' counsel, without advance notice, asked the court to render an additional $6.9 Million judgment against petitioner, notwithstanding that he was not a party and had not received any notice that a judgment could be entered against him, personally.

The prejudicial effect of the $6.9 million judgment against petitioner, individually, was that entry of an unwarranted duplicate judgment which was intended reach what could be petitioner's post-bankruptcy assets, his multi-million inheritance and ownership claims.

For more than a century the central meaning of procedural due process has been clear. Parties whose rights are to be affected are entitled to be heard and defend their interests, and in order to make use of those rights, they must first be notified. *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556, 569 (1972) (quoting from *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233, 17 L.Ed. 531, 534 (1864).

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ceedings because he had a full time law practice in Puerto Rico which he could not abandon without substantial prejudice and the estate had no liquid assets whatsoever with which to hire a lawyer.

The protections of the constitutional requirement of due process are applicable to citizens of Puetro Rico through the application of the Due Process Clause of the Fifth Amendment, or the Due Process Clause of the Fourteenth Amendment. *Examining Board of Engineers*, 426 U.S. 572, 600, 96 S.Ct. 2264, 280, 49 L.Ed. 65 (1975).

The Court below in deciding matters without notice to petitioner, that the court would undertake to rule on matters that had not been brought before it by the parties, clearly denied due process to petitioner.

The court below wrongly intruded in affairs which Congress has committed to the Puerto Rico. In this matter, the courts of the State of New Jersey have taken it upon themselves to adjudicate matters between citizens of Puerto Rico, the petitioner and his mother, which were parties that were not before the court, on claims that were also not before the court and without notice to either of those citizens of Puerto Rico. This denial of due process is particularly appropriate for the granting of certiorari.

Equally deplorable is the entry of judgment against petitioner, when there was another, the bankruptcy estate which had been formally substituted into the action in 1991, and that the court was frequently reminded that petitioner, who was a senior citizen in his middle 70's was moreover, without counsel.

These events are not mere minor procedural mistakes by courts below, but are in fact major denials of the most fundamental concepts of Due Process which affect substantive rights of citizens of the United States and Puerto Rico. It exceeds anyone's sense of fairness, equity and due process for a foreign court to determine without notice the rights of U.S. citizens who are not before it.

The only credible reason for the request for a duplicate judgment against petitioner, personally, when he was not a party, was that plaintiffs intended not to bring the judg-

ment against the bankruptcy estate to the bankruptcy court for collection against the assets of the estate which were the multi-million dollar claims of petitioner.

However, the dismissal of the bankruptcy case, seven months later, can only mean that the bankruptcy court recognized neither of the judgments of the Chancery Court nor the $20 Million proofs of claim that the Goyas had filed, when they submitted themselves to the jurisdiction of the bankruptcy court. Both were objected to and the $20 Million claim was reported as fraudulent by the court appointed Trustee.

II. THE SUPREMACY AND THE FULL FAITH AND CREDIT CLAUSES OF THE CONSTITUTION PRECLUDE THE ENTRY OF THE JUDGMENTS BELOW

The courts of New Jersey denied Full Faith and Credit to the laws and fundamental public policies of the Commonwealth of Puerto Rico as they apply to its citizens, their personal property and estates that are governed by its laws, as well as to contracts and legal partnerships created thereunder.

In affirming the decisions below, the Appellate Division of the Superior Court of New Jersey, applied New Jersey laws to issues that are governed by the civil code of Puerto Rico and held that New Jersey "recognizes neither community property nor conjugal partnerships" (BE appendix —).

In doing so the courts of New Jersey have not only collaborated and or condoned the theft of hundreds of millions of dollars, in the instant case, but also the evasion of hundreds of millions of dollars of federal and commonwealth taxes. What is of even greater consequence, is that Respondents have established a virtually unassailable precedent for the theft of the property of most other legal partnerships and of estates that are governed by laws of other civil law jurisdictions, throughout the world.

The supremacy of 48 U.S.C. § 733a (All citizens of the United States that reside in Puerto Rico for one year or more, are citizens of Puerto Rico), makes Prudencio, Carolina and petitioner citizens of Puerto Rico at all relevant times.

31 LPRA § 9, provides: "The laws relating to family rights and obligations, or to the status, condition and legal capacity of persons, shall be binding upon the citizens of Puerto Rico, although they reside in a foreign country."

Pursuant to the laws of Puerto Rico that apply:

Contracts concerning a future inheritance are forbidden and, therefore, null and void. (31 LPRA § 3421). Accordingly, petitioner's waiver of his right to inherit from his father, contained in the 1974 Amendment, is void, inasmuch as the contract was signed, notarized and performed in Puerto Rico. Moreover, it would have been void even if signed elsewhere, because petitioner was a citizen of Puerto Rico and was subject to its laws. (31 LPRA § 9) The ruling of the Chancery Court that petitioner had waived his right to inherit from his father, is therefore, error.

The 1974 Amendment is void *ab initio* for each of the following reasons: 1. It had an illicit consideration and was, consequently, void and legally nonexistent (31 LPRA § 3432) and, 2. Because the future inheritance waiver was the principal objective of the 1974 Amendment, as determined by the Chancery Court, the contract could not be "substantially enforced" and was also void due to its reverse "savings clause" that provided for its nullity, if, for any reason, it could not be "substantially enforced", in which case the parties were to be returned to the positions held prior to the signing. The Chancery Court judgment that the 1974 Amendment was calid and enforceable, is therefore, error.

The 1972 Agreement became null and void. Its basic and principal obligation was to have an Initial Public Offering of the petitioner's entire ownership interest in the Goya Companies, within two years. The 27 years that have passed, make compliance impossible. A similar reverse "savings clause" mandates its cancellation in the event that it cannot be "substantially enforced". The Chancery Court's determination that the 1972 Agreement as amended by the 1974 Amendment was valid and enforceable was clearly, error.

The 1974 Amendment was invalid and legally nonexistent, for the further reason that it contained a Penalty Clause to award the successful party in any subsequent litigation between the parties, *on any matter,* twice their legal expenditures. That clause was illegal and unenforceable under the laws of Puerto Rico as well as New Jersey. It was based on the illicit and invalid Penalty Clause in a non-existent contract that the Chancery Court rendered two $6.9 million final judgments, one against the bankruptcy estate of the petitioner and the other against the petitioner, individually.

As shown above, the courts of New Jersey have both ignored and violated the laws which Congress, in its wisdom and within its authority, ordered to be the law for the former colony of Spain, Puerto Rico, which became an unincorporated territoy of the United States, pursuant to the Treaty of Paris of 1898. Under the Foracker Act, the Civil Code of Puerto Rico took effect on July 1, 1902, and has been the law of the island, with relatively little modification, since that time. It was the law that was in effect in 1921 when petitioner's parents married in Puerto Rico and a legal partnership of gains and acquest was created on the day of the marriage which would be the exclusive owner of all of the couples gains in assets, during their marriage, which under the laws of Puerto Rico was an economic and financial partnership, which common law marriages are not, as well as an intimate social partnership.

The decision of the courts below also violated an important federal statute that made citizens of the United States, citizens of Puerto Rico, after one year of residence there. (48 U.S.C. § 733a) The legislative history of that statute makes it indisputable that Congress knew what it was doing, and was well aware of the difference between residence and domicile, when it rejected H.R. 11610 which required three years of domicile in Puerto Rico for U. S. citizens to also be citizens of Puerto Rico, and on the recommendation of the governor of Puerto Rico that had been appointed by the President of the United States, of the Committee on Insular Affairs of the House of Representatives and the legislature and tax payers of Puerto Rico, H.R. 11846, which required one year of residence, not domicile, to become a citizen, enjoy the privileges of citizenship and be bound by its civil laws, was enacted into law for the government of Puerto Rico. Upon its enactment, it was inserted as Sec. 5a. of the Act of March 2, 1917 (Jones Act) during the 2nd. Session of the Sixty-Ninth Congress.

Being that petitioner's father was indisputably a citizen of Puerto Rico when he died there, he and his estate was bound by the family, forced heirship, partnership and other titles of the civil code of Puerto Rico. In the decisions below, the court disregarded the above, and other applicable laws that were extensively briefed, which, had they been applied would have resulted in an entirely different outcome. For those reasons alone, the petition for a writ of certiorari should be granted.

There is no question that New Jersey has wrongly intruded in the affairs of citizens and juridical entities of Puerto Rico by disregarding and violating the Puerto Rican civil code and its family and partnership laws and by refusing to give Full Faith and Credit to the well settled laws of Puerto Rico that have been the law of that island territory, since 1902, by Order of Congress, pursuant to which a partnership is gains and acquest is con-

stituted on the day of any marriage that takes place in Puerto Rico, or between citizens of Puerto Rico, unless there had been a duly executed pre-nuptial agreement, stating otherwise. By virtue of the Conjugal Partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and his wife, share and share alike, upon the dissolution of the marriage, 31 LPRA § 3621. Conjugal Partnership is a separate and distinct entity from the spouses that compose it. *Fernandez-Cerra v. Commercial Insurance Co. of Newark*, 344 F.Sup. 314 (1972). *Cruz Viera v. Registrador*, 1987, 118 D.P.R.. During the marriage the law to be applied to the Conjugal Partnership is the law of partnership of Puerto Rico, but after the partnership is dissolved by death or divorce, the applicable law is that governing the liquidation of property of the conjugal partnership. *Janer Vila v. Superior Court*, 1964, 90 P.R.R. 277, 281. Conjugal Partnership as recognized by civil law in Puerto Rico should be considered within the meaning of "partnership" in the Federal Internal Revenue Code, so that the spouse may derive disability under Social Security Law. *Carrasco v. Secretary of Health, Education and Welfare*, 628 F.2d 624 (1980).

The courts below further failed to give Full Faith and Credit to the laws governing the 1974 Amendment. Under Puerto Rican law, the contracts waiver of inheritance rights and its penalty of twice the amount of attorneys' fees and costs for any litigation between the parties, on any matter, irrespective on by whom the action was initiated, is illegal. *See*: 31 LPRA § 2370. Although the courts below did not give credit to that Puerto Rican law, in spite of the fact that the contract was one with petitioner who was a citizen of Puerto Rico and could not, as a mater of law, waive his right or execute a contract concerning his future inheritance, and moreover, was executed in Puerto Rico, including a specific provision that if it could not be "substantially enforced" it and all

it contained would be without force and effect with the parties returned to their status *ante*.

The consequences of the decision in this matter extend well beyond the hundreds of millions of dollars involved. It even extends beyond setting a precedent that will permit the impoverishment of many families by the misappropriation of the property of partnerships and juridical entities. The implications of this case will affect the millions of individuals who were married in civil law jurisdictions throughout the world, until the decisions of the courts below are finally overturned, at some future time at great cost, by an individual or group that is more resourceful and tenacious than the petitioner herein. This Honorable Court should, therefore, grant certiorari.

III. THE DISMISSAL OF THE BANKRUPTCY CASE VACATED THE JUDGMENTS AGAINST THE BANKRUPTCY ESTATE AND ITS JUDGMENT MUST BE GIVEN FULL FAITH AND CREDIT

Pursuant to 11 U.S.C. § 349(b)(2) and § 349(b)(3), Unless the court, for cause, orders otherwise, a dismissal of a bankruptcy case vacates any order, judgment or transfer affecting the bankruptcy estate and revests the property of the estate in the entity in which such property was vested immediately prior to the commencement of the bankruptcy case.

Inasmuch as all creditors of a debtor in bankruptcy must file their claims in the bankruptcy court, the judgment of the bankruptcy court that there were no existing creditors must be given Full Faith and Credit. Upon dismissal, the claims of petitioner, which had been property of the bankruptcy estate, revests to the petitioner, without debts or obligations, which the U.S. Bankruptcy Court held did not exist. It's ruling was not appealed.

CONCLUSION

For all of the above reasons, petitioner respectfully requests that this Honorable Court issue a Writ of Certiorari to review the decisions of the courts below.

Respectfully submitted,

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February 1, 1999

FILED
MAR 5 1999
CLERK

No. 98-1250

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE, FRANK UNANUE, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Petition in this case seeks review of the same judgment as the petition in No. 98-1231, filed on behalf of the same Petitioner, and raises the same questions as are addressed in that petition. This Petition also raises the following additional question:

Did the courts below err in entering a money judgment against Petitioner individually, as well as Petitioner's bankruptcy estate, where (i) the United States District Court, in lifting the automatic stay, had expressly authorized Respondents to resume litigation against Petitioner, who was on notice at all times of the claims against him and actively participated in the defense of the action; and (ii) in any event, Petitioner's bankruptcy case was subsequently *dismissed* by the Bankruptcy Court, so that the estate's assets and liabilities reverted to Petitioner, and any distinction between Petitioner individually and his estate became moot?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Charles Unanue, also known as Ulpiano Unanue-Casal, Petitioner herein,* and the following parties who are named as Respondents in this Court: Goya Foods, Inc. ("Goya"), Joseph A. Unanue, and Frank J. Unanue, together with Carol Ann Unanue-Freeborg, C. Jeffrey Unanue, Robert I. Unanue, Mary Ellen (Unanue) Yorio, C. Randall Unanue, Joseph F. Unanue,** Thomas Unanue, Mary Carmen (Unanue) Norris, Mary Ann (Unanue) Quiñones, Mary Louise (Unanue) Guggenheim, Theresa Elizabeth Devir, Francisco R. Unanue, Mary Isabel (Unanue) McVicar, Carlos Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue, and Jorge Unanue (collectively, the "Beneficiary Respondents"). This Brief in Opposition is filed on behalf of all Respondents except C. Jeffrey Unanue.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6 of the Rules of this Court, Respondents state that the corporate Respondent, Goya, does not have any parent corporations, and that Cardet Wholesale Foods, Inc. is Goya's only nonwholly-owned subsidiary.

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* The Petition's contention that Petitioner Charles Unanue "was not a party in the proceeding below" (Pet. ii) is not accurate. (*See infra*, text at 5-10, 15-18)

** Joseph F. Unanue died on November 28, 1998.

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S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787 13

Respondents respectfully submit this Brief in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

STATEMENT OF JURISDICTION

The Petition in this case fails to properly invoke the jurisdiction of this Court. Petitioner cites 28 U.S.C. § 1254(1) as the basis for jurisdiction in this case (Pet. 3), but that statute confers certiorari jurisdiction upon this Court to review only decisions of the United States Courts of Appeals, and is inapplicable to this case in which Petitioner seeks review of a judgment and underlying orders of the New Jersey state courts. If this Court has jurisdiction, it is pursuant to 28 U.S.C. § 1257(a), which is not cited in the Petition. In any case, the Court lacks jurisdiction over the principal issue raised by the Petition because it is moot. (*See infra* at 12-14)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes upon which Petitioner relies are set forth in the Petition. (Pet. 3-4) However, Petitioner excerpts the section of the Bankruptcy Code on which he relies, 11 U.S.C. § 349(b)(2) and (3), in an incomplete and highly misleading fashion. The complete text of that statute is as follows:

> **§ 349. Effect of dismissal**
>
> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title —
>
> * * *
>
> (2) vacates any order, judgment or transfer ordered, *under section 522(i)(1), 542, 550, or 553 of this title;* and

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.[1]

PRELIMINARY STATEMENT

This Petition represents the culmination of a bitter intra-family dispute that has resulted in prolonged litigation between Petitioner, Charles Unanue, and numerous other Unanue family members over the past 30 years. The case principally involves Petitioner's claim that he is entitled to inherit certain assets from his father, who died in 1976. After eleven years of proceedings beginning in 1987, the New Jersey courts have decisively rejected Petitioner's state-law inheritance claim, as well as his related attempt to set aside two contracts that Petitioner and several family-owned companies had executed in 1972 and 1974 to settle prior litigation.

Petitioner, through the same law firm that has represented him in this matter since 1988, has filed a petition for certiorari to review the judgment and underlying orders entered against him in New Jersey (No. 98-1231). Respondents are filing, simultaneously herewith, their Brief in Opposition to that petition.

In addition to the petition filed by his long-time counsel, Petitioner has also filed this separate *pro se* Petition seeking review of precisely the same judgment below. Petitioner can offer no acceptable justification for his filing of two certiorari petitions on behalf of the same party to review the same judgment in the same case.[2] Petitioner's doing so is particularly egregious because he

1. The italicized words are misleadingly omitted, without any ellipsis or other indication, from Petitioner's quotation of the statute in the Petition. (Pet. 4; *see also* Pet. 25) This misquotation materially alters the meaning of the statute. (*See infra* at 19-20)

2. Petitioner's apparent explanation for submitting two overlapping petitions is that the petitioner in No. 98-1231 is "the Bankruptcy Estate of Charles Unanue," whereas this case is filed by Petitioner Charles Unanue (Cont'd)

previously was rebuked by the Appellate Division of the New Jersey Superior Court for virtually identical misconduct in filing two separate appeals there:

> At the outset, we doubt the procedural viability of [Petitioner's second] separate appeal. There is no reason why the issue [raised in that appeal] could not and should not have been raised in the main appeal. . . . A party is required to raise in a single appeal all of his challenges to the judgment appealed from. . . . [T]he filing of separate appeals by the same party from the same final judgment is an obvious, untenable, and intolerable violation of the overriding policy of judicial administration that litigation be conducted expeditiously, economically, and efficiently.

(Pet. in No. 98-1231, at 10a-11a)[3]

(Cont'd)
individually. Among the difficulties with this "explanation" is that Petitioner's bankruptcy case was *dismissed* by the United States Bankruptcy Court for the District of Puerto Rico on September 12, 1995, whereupon the "bankruptcy estate of Charles Unanue" *ceased to exist* by operation of law and cannot properly be considered a "party" to litigation separate from Charles Unanue himself. (*See infra* at 9-10, 13-14) Petitioner previously conceded as much: In the state-court appeals, Petitioner moved to substitute himself individually as a party to succeed the former "bankruptcy trustee," observing that "[o]n September 12, 1995, the Bankruptcy Court for the District of Puerto Rico dismissed Charles Unanue's bankruptcy petition without prejudice. As a result, all property of the bankruptcy estate, including the [bankruptcy] Trustee's Appeal, was revested in Charles Unanue pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody, Esq., dated Dec. 21, 1995, at 2) Given Petitioner's prior acknowledgment that the bankruptcy estate ceased to be a proper party to litigation some three and one-half years ago, we are at a loss to understand why Petitioner purports to have resurrected it as a petitioner, separate from himself, in this Court.

3. The Petition herein reflects that "the Clerk of this Court has granted this Petitioner use of [the] Appendix" in No. 98-1231. (Pet. 1 n.*)
(Cont'd)

Here, too, the *pro se* Petition in this case represents an unjustifiable duplication of the counseled petition in No. 98-1231. Petitioner's unnecessary filing of these two overlapping petitions, thereby burdening the Court and transparently evading the provisions of this Court's Rule 33.1(g)(1) governing the length of petitions for certiorari, in and of itself provides a sufficient basis for denying certiorari in both cases. In any event, even if considered on the merits, the Petition raises no non-frivolous issues, much less important questions of federal law warranting this Court's consideration.

COUNTERSTATEMENT OF THE CASE[4]

As noted above, the Petition for Certiorari in this case substantially duplicates the Petition in No. 98-1231. To avoid unwarranted duplication, Respondents respectfully refer the Court to their Counterstatement of the Case in their Brief in Opposition

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(Cont'd)
Accordingly, citations herein to the lower court opinions will be to the Appendix to that petition (in the form "Pet. in No. 98-1231, at __"). Similarly, the lower-court opinions and orders that are cited in the briefs in opposition are reproduced in the Appendix to Respondent's Brief in Opposition to that petition, and references here to those documents will be to that appendix ("Opp. in No. 98-1231, at __").

4. The Petition, including sections captioned "Background of the Case" (Pet. 5-9) and "Schemes and Conspiracies" (Pet. 9-18), contains vitriolic allegations of wrongdoing, by Respondents and others, and unsupported assertions of fact extending as far back as 1904. These portions of the Petition contain not a single citation to the record below, and virtually every paragraph contains allegations that are directly contrary to the facts that the state courts actually found. No effort is made in this Brief in Opposition to respond to all of Petitioner's factual allegations, which are almost entirely irrelevant to the question of whether certiorari should be granted. The fact that Respondents have confined this Brief in Opposition to relevant matters should in no event be deemed an admission that any of Petitioner's other allegations are accurate.

in that case in lieu of setting it forth at length again here, and summarize herein only the background relevant to the issues raised by this Petition that are not also presented in No. 98-1231, which concern the relationship between the New Jersey litigation and Petitioner's bankruptcy case in the District of Puerto Rico.

Respondents commenced the New Jersey litigation in the New Jersey Superior Court in August 1987. The Complaint, which raised state-law inheritance and contract issues, named Petitioner (individually) as a defendant. After extensive pretrial proceedings, the New Jersey Superior Court conducted a trial on an important issue before it, the domicile of Petitioner's father, over more than 170 trial days beginning in July 1989. That trial was just about to conclude when, on August 29, 1990, Petitioner filed his voluntary bankruptcy petition in the United States Bankruptcy Court for the District of Puerto Rico.

Upon Petitioner's bankruptcy filing, his nominal "estate in bankruptcy," as represented by a trustee, became a party to the New Jersey action. However, Petitioner remained the real party-in-interest, participated actively in the New Jersey litigation, and was personally responsible for arranging the retention and payment of counsel in the action. Indeed, at Petitioner's instance, the bankruptcy estate was represented for many years, in New Jersey and elsewhere, by the New Jersey attorney who had represented Petitioner individually since 1988 (and who remains Petitioner's counsel of record in No. 98-1231 in this Court).

Petitioner's bankruptcy case triggered an automatic stay of the New Jersey proceedings under 11 U.S.C. § 362.[5] In February

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5. As the District Court later held, Petitioner's obvious, and highly improper, motive in filing his bankruptcy petition was to obtain the automatic stay of the New Jersey action, just as the domicile issue was to be resolved. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. 90, 101-02 (D.P.R. 1993) (noting timing of Petitioner's filing and concluding that "it has every

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1991, the Bankruptcy Court modified the stay to permit the New Jersey Superior Court to determine the domicile issue, and on December 4, 1991, the New Jersey Superior Court ruled in Respondents' favor on that issue. Thereupon, Respondents sought further relief from the automatic stay to complete the New Jersey litigation, and on August 3, 1993, over Petitioner's objections, the United States District Court for the District of Puerto Rico (in a decision subsequently affirmed by the First Circuit Court of Appeals) vacated the automatic stay in its entirety, allowing the New Jersey action to continue against Petitioner. *Unanue-Casal v. Unanue-Casal,* 159 B.R. 90 (D.P.R. 1993), *aff'd mem.*, 23 F.3d 395 (table), 1994 WL 179925 (1st Cir. 1994). In its opinion granting relief, the District Court directed that "the litigation pending in New Jersey will proceed," *id.*, 159 B.R. at 102, and noted that one effect of its ruling was that "[i]f [Petitioner] were to lose in New Jersey then the Debtor would have a declaration against him under the 1974 Amendment for attorney's fees — no small sum. . . ." *Id.* at 99.

At least from that point forward, Petitioner was fully aware that he *and* his nominal estate were potentially liable for any judgment that could be rendered in New Jersey. Significantly, during a status conference in the New Jersey action on September 30, 1993, Petitioner's counsel acknowledged on the record in open court that Petitioner, individually, was "certainly a party in interest" in the New Jersey proceedings. (Tr. of Sept. 30, 1993 conf. at 5) Respondents did not disagree with that assertion, and to the contrary, they expressed no objection whatsoever to the trial judge's statement that either Petitioner individually, the bankruptcy trustee, both, or counsel for either would be welcome to appear,

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appearance of being the sole result of the Debtor's or his attorney's perceptions that he was going to lose in New Jersey"), *aff'd mem.*, 23 F.3d 395 (table), 1994 WL 179925 (1st Cir. 1994); *Goya Foods, Inc. v. Unanue-Casal,* 164 B.R. 216, 223 (D.P.R. 1993), *aff'd mem.*, 32 F.3d 561 (table), 1994 WL 408070 (1st Cir. 1994), *cert. denied*, 513 U.S. 1149 (1995).

submit papers, and orally argue in response to the motion for summary judgment that Respondents had indicated they were about to submit. (*See id.* at 22-25)

Nonetheless, in an effort to thwart or delay determination of the New Jersey litigation, Petitioner instructed his long-time counsel not to appear in opposition to Respondents' motion for summary judgment, and instead chose to appear *pro se* to argue that he was not before the court, for the transparent purposes of delaying the proceedings and attempting to create an impression that Petitioner was being treated unfairly. All the courts below — including the New Jersey Superior Court, as well as the Puerto Rico District Court that granted relief from the stay, and the First Circuit Court of Appeals in affirming that ruling — rejected Petitioner's contention to that effect, recognizing that Petitioner was at all times in control of the estate's legal representation and that Petitioner's long-time New Jersey counsel would have appeared in the case had Petitioner asked him to do so. As the First Circuit observed in denying Petitioner's motion for an emergency stay of the New Jersey proceedings, "the record strongly suggest[ed] that [Petitioner] has been manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute." (Opp. in No. 98-1231, at 4a) The First Circuit further noted:

> Movant's contention that his interests will not be represented in the New Jersey action because the bankruptcy trustee is unwilling or unable to appear is without merit. The New Jersey court has indicated that it would permit movant to appear on his own behalf. As the district court wrote, and as the record amply supports, movant "has demonstrated no problems hiring numerous lawyers and law firms for all of his suits."

(*Id.* at n.1)

On November 19, 1993, the New Jersey Superior Court granted Respondents' motion for summary judgment on the substantive inheritance and contract issues. On March 28, 1994, the New Jersey court granted a motion by Respondents for an award of their reasonable attorneys' fees and expenses incurred in their litigation with Petitioner, as authorized by an express provision of a 1974 settlement contract between the parties. After a hearing before a special master regarding the amount of fees to be awarded, the New Jersey court entered a final money judgment, dated February 23, 1995, in favor of Respondent Goya Foods, Inc. ("Goya"). At Respondents' request, the judgment was entered against both "Charles Unanue and the bankruptcy estate of Charles Unanue." (Pet. in No. 98-1231, at 213a)[6] In entering judgment in this form, the New Jersey Superior Court noted that although judgment was being entered against both Petitioner individually and the bankruptcy estate, "[i]t's clear, of course, that there is only one debt being imposed" and that Respondents were entitled

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6. Respondents' counsel explained the reasons for this form of judgment as follows:

> We framed it that way because when we obtained relief from the stay in the Bankruptcy Court, it was to permit us to continue and conclude this proceeding which, of course, predated the bankruptcy petition. We determined that since Charles Unanue was the defendant in this case, he is the proper person against whom the judgment should be entered, the stay having been lifted to permit just that fact, the entry of a judgment against party defendant Charles Unanue.
>
> However, because the [bankruptcy] trustee has also been a party in these proceedings, we felt that it would be appropriate to have the judgment run against not only Charles Unanue, but the Estate. . . . [W]e felt it was most appropriate so there would be no problem when we go back down to [the Bankruptcy Court in] Puerto Rico as a creditor . . . to have a liquidated claim against both Charles and the Estate.

(Pet. in No. 98-1231, at 204a-205a)

to only a single recovery. (Pet. 208a) Respondents did not, and do not, disagree.

Petitioner appealed the trial court determinations (including the money judgment) to the Appellate Division of the New Jersey Superior Court. While that appeal was pending, on September 12, 1995, the Bankruptcy Court in Puerto Rico granted a motion by the bankruptcy trustee to dismiss Petitioner's bankruptcy case "for cause" under 11 U.S.C. § 707(a), without granting Petitioner a discharge. In dismissing Petitioner's bankruptcy case, the Bankruptcy Court noted, *inter alia,* the absence of creditors "other than those involved in the family dispute" pending in New Jersey. (*See* Opp. in No. 98-1231, at 9a & n.3) The Bankruptcy Court also took note of a series of prior findings by the United States District Court, in its "relief from stay" and related decisions, that Petitioner's bankruptcy filing was "fraudulent," a "sham," and "a ruse designed to frustrate the legitimate rights of his adversaries." (*Id.* at 9a-10a & n.4)[7]

Upon this dismissal of the bankruptcy case (which was not appealed), the nominal "bankruptcy estate of Charles Unanue" ceased to exist, and all assets and liabilities of the estate reverted to debtor Charles Unanue pursuant to 11 U.S.C. § 349(b). Petitioner's counsel acknowledged, at that time, that upon such dismissal "all property of the bankruptcy estate . . . was revested

7. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. at 99-102, *aff'd mem.*, 23 F.3d 395; *Goya Foods, Inc. v. Unanue-Casal*, 164 B.R. at 217-18, *aff'd mem.*, 32 F.3d 561, *cert. denied*, 513 U.S. 1149. The Bankruptcy Court's and District Court's conclusion that Petitioner's "no asset" bankruptcy case was fraudulent proved correct: In 1997, after a ten-day bench trial, the United States District Court for the District of Puerto Rico found that in order to conceal assets from creditors, over a period of many years Petitioner had fraudulently hidden his assets (including valuable real estate in Puerto Rico, New York, Spain and France) in the name of his wife as well as an *alter ego* dummy Panamanian corporation whose owner was found to be a "fictional character." *See Goya Foods, Inc. v. Unanue-Casal*, 982 F. Supp. 103 (D.P.R. 1997), *appeals docketed,* Nos. 98-1553, 98-1554 (1st Cir. 1998).

in Charles Unanue pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody dated Dec. 21, 1995, at 2) As a result, Petitioner individually was substituted for the trustee as the sole appellant in the state court.

On May 19, 1998, after considering lengthy briefs and oral arguments submitted by all parties including Petitioner, the Appellate Division of the New Jersey Superior Court affirmed the trial court's judgment and all the orders appealed from. *Matter of Unanue*, 311 N.J. Super. 589, 710 A.2d 1036 (App. Div. 1998) (Pet. in No. 98-1231, at 3a-11a). The appellate court's opinion rejected Petitioner's challenges to the rulings below, specifically including his objection to the money judgment entered against him individually as well as the bankruptcy estate. (*Id.* at 10a-11a) On July 16, 1998, the Appellate Division denied Petitioner's motions for reconsideration. (*Id.* at 12a-13a) On November 2, 1998, the New Jersey Supreme Court denied Petitioner's applications for certification to review the Appellate Division judgment (*Id.* at 1a-2a), and on February 1, 1999, Petitioner filed his Petition for Certiorari in this case (as well as in No. 98-1231). For the reasons stated below, the requested writ should be denied.

REASONS FOR DENYING THE WRIT

Because a majority of the arguments contained in the Petition duplicate, at times verbatim, those presented in the petition in No. 98-1231, Respondents again respectfully refer the Court to the Reasons for Denying the Writ set forth in their Brief in Opposition in No. 98-1231 for their response to these contentions rather than burden the Court with a duplicative presentation.[8]

8. The duplicated arguments, discussed in Respondents' Brief in Opposition in No. 98-1231, include Petitioner's contentions herein that (i) the New Jersey courts denied him due process because they supposedly adjudicated a claim that had not been pleaded and of which he was not on notice, where in fact the record discloses that that issue was present in the case from its inception; (ii) the domicile of his father, for inheritance

(Cont'd)

The only arguments contained in the present Petition that are not duplicated in the companion case concern the relationship between Petitioner's bankruptcy case in Puerto Rico and the state-court litigation in New Jersey. In substance, Petitioner contends that because he was in bankruptcy during some of the New Jersey proceedings, the judgment rendered against him individually in New Jersey should not stand. However, the major issue that Petitioner seeks to raise in this regard has been entirely moot since his bankruptcy case was *dismissed* in September 1995, and his remaining arguments are founded upon outright misquotations of the Bankruptcy Code and of a Bankruptcy Court opinion. Moreover, Petitioner has made absolutely no effort to suggest how the contentions he seeks to raise would have any importance beyond the parties to the immediate dispute before the Court, or why any of them raises an "important question of federal law" that should be addressed by this Court under Rule 10. Accordingly, the Petition for Certiorari should be denied.

(Cont'd)

purposes, should have been governed by a federal statute, 48 U.S.C. § 733a, rather than determined under state law; and (iii) the Full Faith and Credit Clause obliged the New Jersey courts to apply Puerto Rico law, rather than New Jersey law, to the state-law inheritance issues before it. As demonstrated by comparing the Questions Presented in the two petitions, these are the very same contentions that Petitioner, through his counsel, has presented in No. 98-1231.

I.

PETITIONER'S CONTENTION REGARDING THE PROPER PARTY TO PAY THE STATE-COURT MONEY JUDGMENT WAS RENDERED MOOT BY THE DISMISSAL OF PETITIONER'S BANKRUPTCY CASE, AND INVOLVES NO IMPORTANT ISSUE OF LAW

The Petition's main bankruptcy-related argument is that the New Jersey trial court erred when it entered a money judgment payable by "Charles Unanue and the bankruptcy estate of Charles Unanue." (Pet. 20-22; *see* Pet. in No. 98-1231, at 208a, 211a-213a) According to Petitioner, because he was in bankruptcy at that time, the proper party to pay the judgment should have been the bankruptcy estate only, not Petitioner individually. (*See* Pet. 20-22) Not only does this contention raise no important issue, given the unique circumstances of Petitioner's bankruptcy case, but it has become moot and therefore the Court lacks jurisdiction to address it.

A. The Issue Raised By Petitioner Is Moot

The New Jersey Superior Court's final judgment in this case was entered, against Petitioner and his bankruptcy estate, on February 23, 1995. At that time, Petitioner's bankruptcy case was still pending in the United States Bankruptcy Court for the District of Puerto Rico. However, on September 12, 1995 — several months after the trial court's entry of the money judgment that Petitioner challenges — the United States Bankruptcy Court for the District of Puerto Rico involuntarily *dismissed* Petitioner's bankruptcy case, "for cause" under 11 U.S.C. § 707(a), without granting Petitioner a discharge. (*See* Opp. in No. 98-1231, at 6a-10a)

Under the Bankruptcy Code, *see* 11 U.S.C. § 349(b)(3), this dismissal automatically operated "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position

in which they were found at the commencement of the case."[9] Thus, any distinction between Petitioner and his former "bankruptcy estate" that might have existed while the bankruptcy case was pending was eliminated, and all assets and liabilities of the bankruptcy estate were revested in the debtor, Charles Unanue, individually, by operation of law.

In light of the dismissal of Petitioner's bankruptcy case, the dispute he raises as to whether he or the bankruptcy estate should pay the New Jersey money judgment is moot. Even if this Court hypothetically were to hold that the New Jersey court erred in entering judgment against "Charles Unanue" individually and to direct that that portion of the judgment be expunged, there would still remain the judgment entered against "the bankruptcy estate of Charles Unanue" — which, upon dismissal of the bankruptcy, became Petitioner's personal liability by operation of law. Thus, Petitioner would remain responsible for payment of the New Jersey judgment, just as he is today, irrespective of the outcome of this Petition. Accordingly, the question presented in the Petition is moot and unreviewable, because "no decision on the merits by this Court can now have an effect" on the rights or obligations of any of the parties. *Board of Licensing Comm'rs v. Pastore,* 469 U.S. 238, 239 (1985); *see also Church of Scientology v. United States,* 506 U.S. 9, 12 (1992).

It is significant that, although Petitioner is presumably aware that mootness defeats this Court's jurisdiction, and Respondents presented the same argument that this matter is moot in the appellate proceedings below, Petitioner makes absolutely no effort to explain why he believes this issue still presents a live controversy.[10] It does not and, for that reason alone, the Petition must be denied.

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9. H.R. Rep. No. 95-595 at 337-38 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 6294; S. Rep. No. 95-989 at 48-49 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5834.

10. In the Appellate Division in New Jersey, Petitioner argued that it

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B. The New Jersey Court Correctly Entered Judgment Against Petitioner Under The Unique Circumstances Of This Case

Even if the issue raised by Petitioner were not moot (which it is), this Court should still deny certiorari to review it because the dispute as to whether the New Jersey judgment should run against Petitioner, his bankrupt estate, or both, arises from unique circumstances and there is no likelihood that it will ever recur. The state court, in entering judgment, observed that the situation before it was "anomalous." (Pet. in No. 98-1231, at 208a) Petitioner does not suggest that a ruling regarding how the judgment in this case should have been phrased will affect any other litigants, or cite even a single case in which a comparable dispute has arisen. He has shown neither a conflict among the lower courts that could warrant a writ of certiorari under this Court's Rule 10(b), nor an "important question of federal law that . . . should be settled by this Court" under Rule 10(c). There is, therefore, no reason to grant certiorari. *See, e.g., Ticor Title Ins. Co. v. Brown,* 511 U.S. 117, 122 (1994) (per curiam) (certiorari is not granted to address an issue that is unlikely ever to recur in any other case).

(Cont'd)
was somehow unclear that a liability of a bankruptcy estate (such as a judgment) is transformed into a liability of the debtor individually following a "for cause" dismissal of the bankruptcy. Petitioner apparently believed that such a judgment would disappear into limbo upon dismissal and thereafter would never be payable by anyone. Not only was this position wholly unsupported by authority, but it makes no sense because under Petitioner's reasoning, a debtor whose bankruptcy case was involuntarily dismissed for fraud or other cause would recover the assets initially transferred into the estate but would not be liable on the estate's liabilities. This "super-discharge" would represent substantially better treatment than is available to an honest debtor, who obtains a discharge of liabilities in bankruptcy, but at the price of surrendering all of his or her non-exempt property to the estate for the benefit of the creditors.

Moreover, Petitioner's argument that the New Jersey court committed constitutional error by naming both him and his estate in the judgment is unsupported by citation of any relevant authority. Instead, his argument rests upon a series of factual assertions that are demonstrably at odds with the record and with his own prior positions in this and related litigations. For example:

- Petitioner repeatedly asserts that he was "not a . . . party-in-interest in the proceedings" before the New Jersey courts. (Pet. 20; *see also* Pet. i, ii, 2) However, Petitioner's own counsel specifically advised the New Jersey Superior Court, at a conference held long before the money judgment was entered, that Petitioner individually *was* "*certainly a party in interest*" in the litigation who should have (and was in fact afforded) the right to participate in the proceedings. (Tr. of Sept. 30, 1993 conf. at 5; emphasis added)

- Similarly, Petitioner's contention that he was "not a party in the proceeding below" at any time (Pet. ii; *see also* Pet. i, 2, 20) is plainly false as Petitioner individually was the *only* party defendant from 1987 to 1990 (before Petitioner's bankruptcy filing) and from 1995 to 1998 (after the bankruptcy was dismissed). Moreover, even while the bankruptcy case was pending and the trustee of Petitioner's no-asset "bankruptcy estate" was technically a party in New Jersey, Petitioner was at all times in actual control of the litigation, was always united in interest with his estate, and, as the New Jersey Appellate Division found, actively participated as a party to the litigation even after the bankruptcy trustee became a nominal party. (*See* Pet. in No. 98-1231, at 11a)[11]

11. As the Appellate Division's opinion observed:

[D]efendant [asserts] that the trial court erred in entering

(Cont'd)

- Petitioner asserts that because he and his bankruptcy estate were unable to obtain counsel in New Jersey, "no one [was] available to defend the interests of the bankruptcy estate" in some of the Superior Court proceedings. (Pet. 15; *see also* Pet. 19 n.5, 21) However, over a period of many years, Petitioner consistently had arranged for counsel to represent himself and the estate, jointly or separately, in New Jersey or elsewhere, whenever he wished to do so. (Indeed, the same New Jersey attorney who represented the Petitioner and the "estate" in New Jersey, both in the

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(Cont'd)

> judgment against defendant individually and thereby deprived him of his right to procedural due process . . . [W]e are persuaded that [this argument] is entirely without merit. Defendant's argument is based on the fact that during the course of the litigation, he was substituted for by the trustee in bankruptcy in his then pending bankruptcy action. . . . There was no formal order re-substituting defendant when that action was dismissed and the assets of the estate in bankruptcy revested in him. Nevertheless, defendant, as a *pro se* litigant, actively engaged in the defense of the action, seeking relief by way of cross motions, and otherwise conducting himself as a full-fledged and knowledgeable litigant. He thereby submitted himself for all purposes to the jurisdiction of the court, sought its relief, and fully participated in all proceedings. His present claim that he was denied procedural due process by the trial court rests not on any substance but on the technical oversight of the failure of entry of an order resubstituting defendant for the trustee in bankruptcy. The fact remains that the conduct of the litigation proceeded from the mutual assumption of all parties and the court that that resubstitution was, in actuality, the case, as indeed it was. We think it plain that under these circumstances, defendant must be deemed to have waived the necessity of the formal order and that he must be estopped from seeking to obtain any litigation advantage from its omission.

(Pet. in No. 98-1231, at 11a)

trial court and on appeal, remains counsel of record for Petitioner in this Court, six years later.) As the First Circuit Court of Appeals observed in denying Petitioner a stay of the New Jersey proceedings, Petitioner "ha[d] demonstrated no problems hiring numerous lawyers and law firms for all of his suits," and his decision not to authorize counsel to represent the estate, at a moment he strategically selected, merely continued his notorious pattern of "manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute." (Opp. in No. 98-1231, at 9a & n.1)

- Petitioner asserts that the New Jersey court entered "an unwarranted duplicate judgment," implying the possibility of a double recovery. (Pet. 20) However, in the course of entering the judgment, the New Jersey Superior Court judge specifically stated on the record that "[i]t's clear, of course, that there is *only one debt* being imposed, and there's certainly no basis for duplicating it by charging Mr. Unanue and the bankruptcy estate." (Pet. in No. 98-1231, at 208a; emphasis added) Thus, the specter of double recovery implied by the Petition does not exist and never has existed.

- Petitioner objects that naming him individually as a party to the judgment was "prejudicial" because it would have enabled Respondents to enforce the judgment against Petitioner's "post-bankruptcy assets" rather than against only pre-bankruptcy assets that passed into the estate. (Pet. 10; *see also* Pet. 21-22) Petitioner's retrospective assertion that the judgment should have been enforceable against only the bankruptcy estate (consisting of "pre-bankruptcy" assets), rather than his individual post-bankruptcy assets (assuming the existence of any), is *exactly the opposite* of the position he repeatedly asserted in the Bankruptcy Court at the time, which was that any New Jersey judgment would

represent a *post*-bankruptcy liability for which the estate could not be held responsible (and that Respondents' claim to the contrary was "fraudulent"). The obvious goal of Petitioner's contradictory arguments (which are now moot) was and is to avoid being required to pay any portion of the judgment from any assets at all.

- Petitioner repeatedly asserts that he did not receive notice of the proceedings that led to the money judgment. (*See* Pet. at 2, 18, 20) However, the record reflects that Petitioner, *pro se* and through counsel, was notified of each and every step in the proceedings, including the entry of final judgment against him and the bankruptcy estate. (*See, e.g.*, Pet. in No. 98-1231, at 207a) Indeed, the proposed form of final judgment that Respondents were asking the court to enter was submitted on notice to Petitioner and the bankruptcy trustee well in advance of the hearing. Petitioner's written objections to the substance and form of the judgment were before the court for its consideration and were actually addressed in the court's oral opinion. (*See, e.g.*, Pet. in No. 98-1231, at 202a-205a, 207a)

Thus, even if this matter were not moot, Petitioner has identified no impropriety in the inclusion of himself individually, as well as the bankruptcy estate, as a party responsible for paying the judgment entered by the New Jersey Superior Court. To the contrary, given the history of the New Jersey proceedings, the United States District Court's authorization that the litigation proceed to conclusion against both "the debtor" (Petitioner) *and* the estate, and the existence of both pre- and post-petition aspects to the claim that had ripened into the judgment, simple prudence dictated that the judgment be entered against *both* of the closely affiliated parties that could potentially satisfy it in whole or part. No error was committed, nor is any issue raised that is likely ever again to recur in any other case, and the Petition should be denied.

II.

PETITIONER'S REMAINING ARGUMENTS ARE FRIVOLOUS

Finally, the two cursory arguments contained in Point III of the Petition are founded upon outright misquotation of the Bankruptcy Code and the Bankruptcy Court's opinion and order dismissing Petitioner's case, and are frivolous.

First, Petitioner asserts that "the dismissal of [his] bankruptcy case vacated the judgments against the bankruptcy estate" entered by the New Jersey courts. (Pet. 27) Petitioner relies solely upon 11 U.S.C. § 349(b)(2) and (3), which he quotes as providing:

> Unless the court, for cause, orders otherwise, dismissal of a bankruptcy case vacates any order, judgment or transfer ordered and revests the property of the estate in the entity in which such property was vested immediately before the commencement of this case under this title.

(Pet. 4; *see also* Pet. 27)

Unfortunately, the Petition misleadingly fails to set forth the *entire* text of 11 U.S.C. § 349(b)(2), which actually provides that unless otherwise ordered, dismissal of a bankruptcy case "vacates any order, judgment or transfer ordered, *under section 522(i)(1), 542, 550, or 553 of this title.*" (Emphasis added) Thus, § 349(b)(2) vacates only orders entered under the specific provisions of four sections of the Bankruptcy Code ("this title") — which are orders *by the bankruptcy court* governing exempt property, setoffs, and avoidable transfers. The provision simply has nothing at all to do with, and no effect upon, state-court rulings such as the New Jersey Superior Court's judgment on Petitioner's inheritance and contract claims, particularly given the federal District Court's order lifting

the automatic bankruptcy stay and directing that the state case proceed to judgment.[12]

Petitioner also asserts that by dismissing his case, the Bankruptcy Court implicitly rejected Respondent Goya's status as a creditor of Petitioner's estate and held that "there were no existing creditors," thereby reaching a binding conclusion that precluded the New Jersey courts from entering a money judgment against him. (Pet. 27; *see also* Pet. 22) Once again, Petitioner engages in selective reading, this time of the Bankruptcy Court's dismissal opinion. Far from holding that Petitioner had "no existing creditors," the Bankruptcy Court actually observed that "there are no Claimants *other than those involved in the family dispute* amply documented in our opinions and those of the U.S. District Court cited above." (Opp. in No. 98-1231, at 9a n.3; emphasis added) The "family dispute" to which the court referred was, of course, the New Jersey litigation between Petitioner and Respondents that resulted in the judgment below. Nothing in the Bankruptcy Court's opinion is inconsistent with that judgment.

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12. *See, e.g., Blue Mountain Investments, Ltd. v. Bone*, 186 B.R. 508, 513 (D. Kan. 1995) ("[b]y its terms, § 349(b)(2) vacates only orders entered under §§ 522(i)(1), 542, 550, and 553" and did not affect orders entered under other provisions), *appeal dismissed*, 100 F.3d 967 (10th Cir. 1996); *Norton v. Hoxie State Bank*, 61 B.R. 258, 260 (D. Kan. 1986) ("Section 349(b)(2) affects only the specific actions delineated in that subsection").

CONCLUSION

For all the reasons stated above, as well as in Respondents' Brief in Opposition in No. 98-1231, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 98-1250

In The
Supreme Court of the United States

October Term, 1998

Ulpiano Unanue-Casal, a/k/a/ Charles Unanue
Petitioner,

v.

Goya Foods, Inc., Joseph A. Unanue,
Frank Unanue, *et al*,
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey

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PETITIONER'S REPLY BRIEF

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March 23, 1999

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31 LPRA § 3551..... 6, 7

31 LPRA § 3621..... 7, 8, 9

31 LPRA § 3622..... 7

31 LPRA § 3623..... 7

31 LPRA § 3624..... 6, 7

31 LPRA § 3641..... 7

31 LPRA § 3672..... 6, 7

31 LPRA § 3673..... 7

Other Authorities:

Civil Code of Puerto Rico (1902) § 1282..... 6

Civil Code of Spain (1888) Art. 1310, 1315... 6

H. Rept. No. 95-595..... 3

H.R. 8200, 95th. Cong.
1st. Sess. (1977) pp 337, 338..... 3

Respondents' Brief in Opposition does not respond to the important issues of federal and constitutional law in Petitioner's brief. Those not responded to must be considered as admissions. Respondents continue the smear campaign with their customary profusion of lies. Supreme Court Rule 15.2 obliges me to point out perceived misstatements which would consume most of the 10 pages allowed for the reply brief. The plethora of perceived misstatements are, therefore, reported in the appendix (1a-6a).[1]

Evidence is available, but not included, that support my counter-statements. I certify that everything I say herein, is true, and agree that if any statement of mine is found to be willfully false, I should be punished.

In fairness, Respondents and their counsel should also be punished for the intent to obstruct justice with the intentional lies and misstatements made to this High Court, and to the courts below.

PREAMBLE

Notwithstanding that the bankruptcy court held that I was not guilty of any wrongdoing, Respondents, rather than dispute the issues in my brief, repeat the previously rebutted calumny and accusations made to appellate courts below, without evidence, and relying on the intensive promotion, publicity and media coverage such as that given to the hiring, by my brother Frank Unanue ("Frank"), of the Honorable Judge of the 1st. Circuit, who became the Chief Judge and the representative of that court of appeals, in Puerto Rico, to sail his Cuter Queche, *representing Goya and Puerto Rico,* round trip across the Atlantic, *as the Danza GOYA,* in the Christopher Columbus Regatta and to

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[1] Reference to the attached appendix will be noted as (__a), to the Lodging Appendix as (__b), to the Petition for the Bankruptcy Estate as (BE___) and to the Respondents Brief in Opposition as (RB___).

thereafter host festivities in San Juan, New York and Boston. (1b-6b). Meanwhile, in New Jersey, my brother "Joseph" made self-serving political contributions exceeding $20 Million, The New Jersey press reported: "Joseph Unanue, worth $475 million by some accounts, was co-chairman of the fund-raising committee for Governor Whitman's reelection campaign last year." (7b).

Back in Puerto Rico, Frank, using the Goya Companies based in Puerto Rico as *alter egos* and some of the tens of millions of dollars of fully tax-exempt dividends, *including my 25% share*, made further undetermined contributions to the electoral campaign of the governor of Puerto Rico, as he had for the previous governor from the other party, and appears frequently with him in the local press and media. On information and belief, the last electoral campaign is being investigated, by the Attorney General, for the wrongful use of contributions made to combat Aids.

Respondents engaged the largest legal firm in New York, the largest in Puerto Rico and one of the largest in New Jersey, to defend their larceny, by submitting biased proposed orders and making statements with slander and lies that busy district and appellate courts found credible due to persistent repetition by such mighty "officers of the court" and overlooked that the proposed orders and suggested findings are without evidence or substance.

I. THIS COURT HAS JURISDICTION TO REVIEW THE ABSTENTION AND OTHER DECISIONS BELOW.

As pointed out by Respondents, it is pursuant to 28 U.S.C.§ 1257(a) that this Court has jurisdiction.

II. DISMISSAL OF THE BANKRUPTCY CASE VACATED THE JUDGMENTS AGAINST THE BANKRUPTCY ESTATE.

I can agree with Respondents' statement that Petition to

review the issue of the judgment against the bankruptcy estate is moot, ***only if*** the dismissal of the bankruptcy case vacated the judgment against the bankruptcy estate. It is well settled that, upon dismissal, without prejudice, property rights are restored to the position they were in prior to the bankruptcy petition, without anything that occurred during the bankruptcy, reverting, to the debtor, unless ordered that it revert, by the bankruptcy court.

The Legislative History of 11 U.S.C.§ 349(b), Effect of dismissal, states in relevant part:

> "The basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case. This does not necessarily encompass undoing sales of property from the estate to a good faith purchaser. Where there is a question over the scope of the subsection, the court will make the appropriate orders to protect the rights acquired in reliance on the bankruptcy case." (H.Rept.No.95-595 to accompany H.R. 8200 95th Cong. 1st.Sess. (1977) pp. 337, 338)

Moreover, Respondents' counsel, Michael R. Griffinger, Esq. admitted and assured the New Jersey Chancery Court:

> "As your Honor knows, under Section 362 of the Bankruptcy Code is (sic) the lifting of the stay permits us to go up to and including the entry of judgment and any appeals, but as far as collection we must go back to the Bankruptcy court and say to the Bankruptcy Court here is our claim, we wish to realize it in this Court, and that is why we framed it [the proposed order for an additional judgment against the debtor, individually] the way we

did." (BE 205a).

Yet, as obviously had been planned, the judgment against the bankruptcy estate was intentionally not brought to the Bankruptcy Court as Mr. Griffinger had informed the New Jersey court would be required for its collection. As a result, the dismissal of the bankruptcy case for the cause that there were no creditors before the bankruptcy court, dissolved the bankruptcy estate, without any provision whatsoever for the survival of the judgment against the bankruptcy estate, which was the only party defendant.[2]

Respondents' proffer that the judgment against the bankruptcy estate reverted to me overlooks all of the following facts:

1. That on December 19, 1991, I was substituted as the only party defendant and the only party in interest in the New Jersey proceeding by the trustee of my Chapter 7 bankruptcy estate (8b-10b). I have, since then, not been a party or party in interest in the New Jersey proceeding. My presence in the Chancery Court, after that, was not by invitation, as alleged, but in compliance with an order of the court, to be present. At every appearance I made it clear that I was not a party and was never told otherwise. After September 5, 1990, I have not been represented by Mr. Brody in the proceeding. Mr. Brody, represented the bankruptcy trustee, with whom I had a conflict of interest, again, after February 23, 1995, in the Appellate Division,

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[2] In the belief that they would have difficulty in collecting the judgment against the bankruptcy estate in the bankruptcy court, Respondents, on February 23, 1995, without me or the trustee of the bankruptcy estate being present, surprised the New Jersey court by submitting a proposed order for dual final judgments of $6.9 Million, *one against me, who was not a party and was in Chapter 7 bankruptcy with no assets or interests* and the other against the bankruptcy estate, which Respondents obtained *the same day*, without opposition.

with his fees being paid by my wife. *After* the dismissal of my bankruptcy case, on September 12, 1995, he continued the appeal of said judgment, for which he continues to be paid by my wife.[3] *My wife has a vested interest because Goya has sued to collect the judgments, from her.*

2. That it is well settled law that an individual in Chapter 7 bankruptcy cannot be sued for pre-petition debts and obligations, which are under the exclusive jurisdiction of the Bankruptcy Court, *nor given a judgment for those debts.* (No case was cited, or could be found, in which a judgment entered against a debtor, or his estate, in Chapter 7 bankruptcy, for pre-petition debts, reverted to the debtor upon a dismissal, without prejudice, of the bankruptcy case, without the bankruptcy court ordering that it revert.)

3. That no case could be found, other than the instant case below, in which an individual that has not been made a party, nor noticed as party in interest by the filing of a complaint, has been issued a judgment against him.

III. THE LIES MADE TO THE COURTS OBSTRUCT JUSTICE AND COMPOUND THE FELONIES.

It has not and cannot be disputed that on November 13, 1921, the day of the marriage, in San Lorenzo, Puerto

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[3] Mr. Jan Brody represented me until September 5, 1990, when the bankruptcy stay was imposed and represented the bankruptcy trustee Mr. Quiros-Lopez, from approximately February 15, 1991, when the bankruptcy stay was modified to allow only the completion of the domicile hearing, until December 4, 1991, when that interlocutory decision was rendered. I had a conflict of interest with the trustee, because, jointly with Goya, he sued me in the bankruptcy court. I had to hire lawyers to represent me there. Mr. Brody then represented the trustee for the appeal to the Appellate Division, of the judgment against the bankruptcy estate, *after the final judgments of February 23, 1995. I was represented, in the Appellate Division, by McElroy, Deutsch and Mulvaney until judgment was rendered and have been pro se* thereafter.

Rico, between the then citizens of Spain, Prudencio Unanue ("Prudencio") and Carolina Casal ("Carolina"), a legal partnership of gains and acquest was created pursuant to the Civil Code of Porto Rico, 1902, §1282 (currently 31 LPRA § 3551) and Article 1310 of the Civil Code of Spain (1888) ("Conjugal Partnership"), which partnership would be an entity separate and distinct from the spouses, to be administered by the husband, Prudencio, governed by the partnership laws in the Civil Code of Puerto Rico, where it was created and would continue, until the dissolution of the marriage, irrespective of any changes in the residence, domicile or nationality of the spouses (31 LPRA § 3551).[4]

The theft of the Goya shares:

Prudencio left Carolina at their residence in Puerto Rico and travelled to the Goya offices in Brooklyn, New York, on November 16, 1970. There he created a New Jersey *inter vivos* trust that had been prepared by the legal firm of Skadden, Arps, Slate, Meagher & Flom ("Skadden") and *illegally* (in violation of 31 LPRA § 3624, § 3672) *deposited into it the majority voting shares of Goya, which were the exclusive property of the Conjugal Partnership, making himself, Joseph and Frank the trustees. At the same time Prudencio signed an illicit new will, which had*

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[4] Conjugal Partnerships, are created on the day of the marriage in over 90% of the marriages taking place in Civil Law jurisdictions. Civil Law exists in virtually all of the nations in South and Central America, the Caribbean, most of Europe and many other nations, with exceptions such as the United States and the United Kingdom, which are governed by Common Law.

been prepared by and was witnessed by Skadden, [5] *all in violation 31 LPRA §§ 9, 10, 221, 441, 2361, 2362, 2367, 2368, 2369, 2370, 3551, 3621, 3622, 3623, 3624, 3641, 3672 and 3673, and made arrangements, in his will, for the theft of all the property of the Conjugal Partnership.*

IV. RESPONDENTS MISINFORM THIS COURT THAT THE GOYA COMPANIES ARE ALL SUBSIDIARIES OF GOYA, *WHICH IS NOT TRUE,* TO HIDE THE FACT THAT NEW JERSEY DID NOT HAVE JURISDICTION.

The Goya Companies, *were 11 independent and self-governing,* privately held companies.

As required by the "estate plan" devised by Skadden for its clients Joseph, Frank and their *alter ego*, Goya, the 1972 Agreement for the sale of my shares of stock to the 11 Goya Companies, and their subsequent public sale for my benefit, was defaulted. During the rancorous litigation that followed, I was compelled to give up, *in futuro,* the inheritance from my father, in the 1974 Amendment, which was signed, notarized and performed in Puerto Rico and was therefore governed by its laws.[6] *Significantly, neither of my parents were parties or signatories.*

The courts below, without the participation of 11 of the 12 indispensable contracting parties, held that the 1974 Amendment, which had been executed and performed in Puerto Rico, with illicit consideration and was null *ab initio*

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[5] Other than learning, some years later, that some of the stock of Goya had been placed in a trust, Petitioner had no knowledge that the property of the Conjugal Partnership had been disposed of (stolen) until 1987, bringing about the subsequent 12 years of litigation.

[6] The 1974 Amendment had a New York State "choice of law clause" intended to allow the violation of the laws of Puerto Rico, which had all the principal contacts with the 1974 Amendment. Because the consideration was illicit in Puerto Rico it was null *ab initio.*

(11 LPRA § 3432), was valid and enforceable. Then, based solely on an illegal penalty clause that the 1974 Amendment contained in Section 8.01 (13b), the Chancery Court rendered the dual $6.9 Million judgments, against the bankruptcy estate and against me, individually.

The judgments were issued notwithstanding; 1. That penalty clause on which they were based was illegal under the laws of Puerto Rico, New York and New Jersey; 2. That the 1974 Amendment was "born dead" and never existed because of a prohibited renunciation of a future inheritance (31 LPRA §3421), in Section 6.03 (14b-16b), which was the principal objective of the 1974 Amendment; 3. The "reverse savings clause" contained in Section 7.03(b) (11b, 12b), requiring the cancellation of the 1974 Amendment if it could not be substantially enforced; 4. That the ruling was made, summarily, without discovery and without 11 of the 12 indispensable contracting parties. See: *Acton Co. Inc. of Mass. v. Bachman Foods, Inc.*, 668 F.2d 76, 81 (1st Cir. 1982); 5. That having been born in Puerto Rico I was an "heir by force of law" pursuant to 31 LPRA §§ 2361, 2362) and, moreover, as a citizen of Puerto Rico, I could not renounce a future inheritance (31 LPRA §§ 9, 3421), and; 6. That the Penalty Clause in Section 8.01 (13b), which was the sole basis for the $6.9 million judgments, was being used to enforce compliance with the prohibited renunciation of a future inheritance.

It was not until December, 1986, 2 years after the death of my mother, who was the 1/2 owner of the Conjugal Partnership and who had promised me that she would never leave me out of her will, and never did, that I discovered that the waiver of the future inheritance from my father was a nullity ab initio, pursuant to 31 LPRA §§ 2361, 2367, 2369, 2370 and, moreover, that the renunciation or waiver *in futuro* of an inheritance was specifically prohibited by 31 LPRA § 3421. In February, 1987, I learned that as

executors of our parents' wills, my brothers Joseph and Frank had taken all of the property of the Conjugal Partnership, including the 1/2 that became the exclusive property of my mother, upon the death of Prudencio (31 LPRA § 3621), for themselves, leaving Carolina with a total of only $30 *THOUSAND*. The current real worth of her estate, of which I have received no part of the 25%, to which I have an inalienable legal and testamentary right, exceeds $200 *MILLION*.

V. THE DECISIONS BELOW WILL PERMIT THE CONTINUING EMBEZZLEMENT OF PARTNERSHIPS AS WELL AS LAWSUITS IN STATE COURTS AGAINST DEBTORS THAT ARE UNDER THE PROTECTION OF BANKRUPTCY COURTS.

Respondents state on page 14, that the circumstances of this case are unique and that there is "no likelihood that it will ever recur". ***The opposite is true.***

Respondents do not state how or why another spouse that is the administrator of a Conjugal Partnership or the managing partner of a partnership of gains, could not, after establishing a real or nominal residence in New Jersey, create a New Jersey trust, deposit into it the nominally held partnership property and use or dispose of it, *as Prudencio did*, to defraud his wife, the 1/2 owner of their Conjugal Partnership, his own and his wife's forced heirs [7] and her testamentary heirs, as well as the taxing authorities, *as Prudencio did* with the collaboration of Skadden, his sons

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[7] Pursuant to 31 LPRA § 2361, "forced heirship" is that part of the testator's property which he cannot dispose of because the law has reserved it for specified heirs, called on that account, *heirs by force of law. Petitioner, who was born in Puerto Rico was unquestionably an heir by force of law and a citizen of Puerto Rico governed by its laws.*

Joseph and Frank and the tacit approval of the New Jersey courts, ***after moving Goya from New York to New Jersey.***

Similar or identical thefts of partnership property, will be much easier because of the precedent set by this case. By allowing the precedent to stand, the United States could be held responsible for the future thefts of out-of-state or foreign partnership property, until a victim or victims with sufficient resources, tenacity and ability, *or a class action*, finally succeeds in having the precedent, that New Jersey need not give Full Faith and Credit to the laws of Puerto Rico, or to the laws of those nations with which the United States has treaties, *is overturned.*

Respondents have used the assets that they stole to persuade the New Jersey courts to wrongly deny Full Faith and Credit to the Civil Code of the Commonwealth of Puerto Rico which the Congress of the United States made effective for the government of Puerto Rico and its residents, on July 1, 1902.

A further precedent with the potential to jeopardize many, is the decision below that a judgment can be rendered by a state court, against an individual that is under the protection of the bankruptcy court, for pre-petition debts.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the New Jersey Supreme Court, and the courts below.

Respectfully submitted,

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March 23, 1999

SCHEDULE OF LIES AND MISLEADING STATEMENTS CONTAINED IN RESPONDENTS' BRIEF IN OPPOSITION, IN COMPLIANCE WITH SUPREME COURT RULE 15.2.

1. Page i: In the middle of the second paragraph: "Petitioner who was on notice at all times of the claims against him" -- is wrong!

Petitioner had been substituted by the bankruptcy trustee on December 19, 1991 (8b-10b) as the only party defendant and the only party in interest. At no time thereafter was Petitioner re-substituted or put on notice that he was a party. He did not become aware of the judgment against him, individually, rendered against him on February 23, 1995, until a few days after it was rendered.

2. Page i: In the last 1/3rd. of the second paragraph: "Petitioner's bankruptcy case was subsequently dismissed by the Bankruptcy Court, so that the estates' assets and liabilities reverted to Petitioner, and any distinction between petitioner individually and his estate became moot" -- is a false and misleading premise.

11 U.S.C. § 349(b), as clearly stated in its Legislative History, at Pg.3, states that dismissal undoes the bankruptcy case "to restore all property rights to the position in which they were found *at the commencement of the [bankruptcy] case.*"

The bankruptcy estate, and Charles Unanue, were at all times separate and distinct entities. Upon dismissal, the bankruptcy estate ceased to exist, but Charles Unanue, who was not a party did not cease to exist, notwithstanding that the judgment against the bankruptcy estate could not revert to him, without it being so ordered by the bankruptcy

court. It was obviously for that reason that Respondents sought an additional judgment against me, individually, notwithstanding that I was in bankruptcy.. Respondents' contentious false premise that liabilities incurred in a state action, while all of my interests were in the bankruptcy estate, revert to me, without it being ordered by the bankruptcy court, is a fabrication that is intended to mislead.

3. Page ii: On the fist line: "The parties to the proceeding below were Charles Unanue,' " -- repeats the same lie!

Charles Unanue was not a party at any time after December 19, 1991, when with the consent of all parties and on order of the court, he was substituted by the bankruptcy trustee (8a-10a). Thereafter he was never a party or a party in interest.

4. Page ii, Footnote ': "The Petition's contention that Petitioner Charles Unanue "was not a party in the proceeding below" (Pet. ii) is not accurate. (*See infra*. text at 5-10, 15-18)"; is a lie because my statement is entirely accurate and their's is an effort of further deception, as follows:

5-10 accurately states that Respondents' Complaint of August 1987 raised state-law inheritance issues, and wrongly states that contract issues were also raised. Respondents, however, *hides the fact that the complaint that they refer to was filed more than 4 years before I was taken out of the case and substituted by the bankruptcy trustee on December 19, 1991, by Order of the Court, with the consent of all parties. See: 8b-10b.*

15-18 maliciously states that the Petitioner's own counsel, *on Sept. 30, 1993,* had said that Petitioner individually was "certainly a party in interest", hiding the fact that I had been without counsel in the New Jersey proceedings since September 5, 1990.

5. Page ii, on the last line: "Cardet Wholesale Foods, Inc. is Goya's only nonwholly-owned subsidiary"; is disingenuously and intentionally misleading.

The intent of the above is to support the subsequent lie that the Goya Companies, are all "wholly-owned subsidiaries of Goya", see Reply Brief at 7, which is not true because they are all "independent self-governing entities". Respondents attempt to establish that lie, because the illicit Penalty Clause in the legally non-existent 1974 Amendment, between the 11 Goya Companies and myself, is the only ground for the dual $6.9 Million judgments, which Respondents are trying hard to collect from my wife in the district court of Puerto Rico, with the astonishing and impossible allegation (and ruling, on which Motions for Reconsideration are pending), devoid of evidence or substance, that she is my *alter ego*, and therefore responsible for my debts. All of the above, combined with harassment and threats which have caused her a nervous breakdown.

Respondents problem is that the finding of the courts below, that the legally non-existent 1974 Amendment (under the laws of Puerto Rico where it was executed and performed), between the Goya Companies and myself, was valid and enforceable in New Jersey, *was made without the participation of 10 of the 11 "independent self-governing" Goya Companies, each and every one of which was an indispensable party,* without which the New Jersey judgment on the valid existence of the 1974 Amendment,

is in itself invalid. By lying or implying that the other Goya Companies are all subsidiaries of Goya, their absence in the New Jersey proceedings could possibly be overcome by "collateral estoppel".

6. Page 1 at the bottom of the 3rd. paragraph: "Petitioner excerpts...11 U.S.C.§ 349(b)(2) and (3) in an incomplete and highly misleading fashion": -- it is Respondents' statement and not mine that is "highly misleading", as explained in my Reply Brief at 3, 4.

7. Page 2 in the third paragraph: "Petitioner, through the same law firm that has represented him in this matter 1988, has filed a petition for certiorari...": -- is false, for each of the following reasons:

A. My Petition is *pro se*. B. The "same law firm" has not represented me in the proceeding since 1990. C. The only legal firm that has subsequently represented me was: McElroy, Deutsch & Mulvaney which represented me in the appeal of the judgment against me, individually, to the Appellate Division.

Respondents indulge in the strategy of repeating the same lies until they take on the patina of truth, in further obstruction of justice.

8. Page 2, starting on the last line: "Petitioner's doing so [filing two petitions for certiorari] is particularly egregious because he previously was rebuked by the Appellate Division of the New Jersey Superior Court for virtually identical misconduct in filing two separate appeals there"; is also false and misleading.

The Appellate Division accepted the two appeals, one by myself (not two as alleged) and the other by the trustee of

the bankruptcy estate, with whom I had a conflict of interest because, notwithstanding that he had certified that the $20 million Proofs of Claim of Goya and Goya de Puerto Rico, Inc. *were fraudulent,* he then, after obtaining a Porche Sports Car, at a small fraction of its market value, he, jointly with Goya, sued me in the bankruptcy court.

I never filed two appeals or petitions on the same matter. Single appeals and Petitions were filed by separate and distinct entities, which had conflicts of interest, because final and interlocutory judgments were entered against each of them, in the "cover up" and defense of the theft of all of the assets acquired by the Conjugal Partnership of my parents during its 55 years of existence and of the subsequent and continuing embezzlements and crimes, which require the expenditure of tens of millions of dollars, by Respondents, for their occlusion and defense.

9. Footnote 2, which commences on Page 2, expounds the misleading theory that by the dismissal of the bankruptcy case, the bankruptcy estate ceased to exist, which may be true, but then the money judgment was invalid, as were as interlocutory judgments, that held that my father Prudencio was domiciled in New Jersey when he died, a citizen of Puerto Rico and also invalid was the legally non-existent 1974 Amendment and all it contained, because the disputed judgments also ceased to exist.

10. Page 3 continues the argument that I had no right to file a Petition for certiorari, only because Respondents did not go to the bankruptcy court, in the 7 months prior to the dismissal, to collect the judgment against the bankruptcy estate as Respondents' Counsel of Record had said they would be required to do (Reply Brief at 3), and the bankruptcy case was dismissed because there were no creditors before it. Clearly a *non sequitur.*

The granting of the Petition for a Writ of Certiorari is, therefore, needed to defeat Respondents contention that the judgment against the bankruptcy estate survived the dismissal of the bankruptcy case and can be used, as is being done, in the district court of Puerto Rico, to attach all of the real property of my wife in Puerto Rico, the United States and Europe and collect the judgment from her, by lying to that court that Goya had previously owned all of the properties and, thereby, obtaining the ridiculous finding that she is my *alter ego*, notwithstanding that it is undisputable that she is a highly educated and intelligent individual, that definitely has a mind of her own.

Note: I hereby certify that in the subsequent 18 pages, the falsehoods, lies, misrepresentations and misleading statements, continue at about the same pace in Respondents' Briefs in Opposition to both my Petition and that of the bankruptcy estate.

Inasmuch as Supreme Court Rule 15.2 requires that I inform that High Court of all "perceived misstatements", I will continue this exercise and bring it to completion, immediately upon being advised that the Court wishes me to do so.